

**ON LEGAL LIMBOS AND PUBLIC PERCEPTION:
HOW DOES FRAMING MATTER?**

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Extended Abstract

Legal systems often navigate contentious issues through various legal frames that define rights and enforce their recognition. A peculiar scenario arises where the recognition of a right coexists with a formal prohibition of the same conduct. We define those legal grey zones as legal limbos.

This research proposal employs an experimental vignette design to explore the social and behavioral impacts of legal limbos. Focusing on contentious issues such as abortion and drug use, we plan to present recruited participants with vignettes where those rights are framed either within a legally clear structure or a legal limbo. Across these conditions, the study examines how legal limbos affect public recognition of a right, public support, perceived social stigma, and individual's willingness to exercise the right.

By addressing these dynamics, the proposal aims to contribute to the literature on (legal) frames, their impact on behavior, and the expressive function of the law, offering insights into how different forms of legal recognition shape social behaviors and beliefs.

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Being a terminally ill patient in Colombia after 1997¹ would mean to be bound by the still existing prohibition of euthanasia pursuant to Art. 106 of the Colombian Penal Code (*Homicidio Por Piedad*) yet declared legally not binding by the Constitutional Court in specific circumstances. Similarly, being a gay man in Singapore until 2022² would mean living under the shadow of Section 377A of the Penal Code, which expressly criminalized sexual intercourse between men, while at the same time being aware of a *de facto* nonenforcement by courts of Section 377A. In Germany, being a woman intending to terminate a pregnancy would mean facing a criminal prohibition under Section 218 of the German Penal Code and a risk of up to 3 years of imprisonment, knowing though of the

¹ Constitutional Court of Colombia C-239, 1997.

² On 29 November 2022, the Parliament of Singapore passed a bill to repeal Section 377A.

existence of a legally recognized exemption from such liability when the procedure is performed under specific conditions.

All these cases share a common thread. The terminally ill patient in Colombia, the gay man in Singapore, and the pregnant woman in Germany are each subject within legal systems that have created a form of *'legal limbo'* regarding a particular conduct crucial to their lives. These practices are not (or no longer) strictly prohibited in all cases, yet they are not fully and explicitly legalized either. Instead, they exist in a nuanced legal grey area where prohibitions are either unenforced, judicially invalidated under certain conditions, or legislatively exempted from punishment within specific frameworks.

I. Background and Literature

To conceptualize the notion of “legal limbos” and understand their influence on the behaviors and beliefs of individuals within a legal system, we begin by analyzing the mechanisms through which rights are granted. This inquiry involves a comparative examination of existing legal systems and their respective approaches to legal recognition. Furthermore, we review pertinent literature on the subject (*e.g.*, Hart 1977; Rawls 1971; Dworkin 1977).

Based on this analysis, we classify the modes of rights recognition along a continuum, ranging from the outright denial of a right to its full institutionalization and protection. These modes are categorized as follows:

- i.* **Constitutional right:** the highest form of rights recognition occurs through constitutional enshrinement. In constitutional democracies, such rights enjoy the most robust legal protection and are often considered foundational principles of the legal order.
- ii.* **Statutory right:** these rights are recognized and protected through specific legislative acts. While statutory rights are generally less entrenched than constitutional rights—being more susceptible to amendment—they still hold significant legal stability within the system.
- iii.* **Judicially interpreted right:** this category is particularly significant in common law systems, where judicial interpretation is recognized as a source of law. In civil law systems, judicial interpretation also plays a role, particularly in expanding or reinterpreting existing statutory rights to cover new situations or issues.

- iv.* **Statutory Exempted right:** here, the law formally negates the right, by criminalizing the conduct that the right would protect. However, the same legal framework creates exceptions or exemptions from punishment, thereby indirectly recognizing the right.
- v.* **De-Facto (Non-Enforcement) right:** in some cases, rights are implicitly acknowledged through the non-enforcement of prohibitory laws. Although the law formally negates the right, the lack of prosecution renders the prohibition effectively moot, allowing the right to exist in practice.

By juxtaposing the five categories of rights recognition, we classify the first three as instances of “Plain Laws” and the latter two as examples of “Legal Limbos” or “Grey Laws.” The distinction lies in the presence or absence of internal contradictions within the legal framework. In the first three cases, the existence of a right within the legal system is unequivocal, without any conflicting negation. Conversely, the last two categories are characterized by the coexistence of the right and its negation, thereby creating a legal grey area.

From a purely positivist perspective, despite the inherent differences in the modes of recognition across these categories, the outcome remains the same for both Plain Laws and Grey Laws: a right is granted, and individuals are able to exercise it. In this sense, these legal categories can be conceptualized as frames.

The literature on frames and their effect is particularly rich. Goffman (1974) defines those as schemata to elicit people’s action or perceptions. In the field of behavioral economics and psychology, several contributions have demonstrated that the way choices are framed significantly influences decision-making or opinions (Tversky & Kahneman 1981; Chong & Druckman 2007; Krishna & Sokolova 2017). Even in the more specific legal field, Oliver & Johnston (2000) highlight the role of legal framing and legal language in shaping individuals' acceptance of legal rules; or Leachman (2013) explores how social movements strategically employ different legal frames to articulate rights and persuade others in their pursuit of recognition.

In connection with this discussion, the literature on the expressive function of law offers valuable insights. This body of work highlights the proposition that law carries an inherent expressive function: legal statements convey normative messages that shape individuals' normative beliefs (Sunstein, 1996; Mullender, 1998). In this sense, legal expressions function as a source of normativity, guiding individuals in discerning what is right and what is wrong (McAdams, 2015).

II. Research

Building upon all those strands of literature, this research seeks to address the following questions: *how are the categories of clear plain laws explicating granting a right different from the cases in which a right exist in a grey-law area?* More specifically, *as we move from explicit legal provisions to legal limbos, what are the associated costs borne by individuals?*

We define those costs by resorting to a set of measurable relevant outcomes that inform our analysis.³ Specifically, we investigate whether the ‘grey’ nature of a law could increase its public support; whether individuals perceive themselves as equally empowered to adopt a certain conduct regardless of the frame adopted; and how those different legal frames influence the ‘normative messages’ conveyed by legal rules, particularly in shaping individuals’ perceptions of what constitutes the “right” or socially acceptable course of action.

III. Methodology

To provide an answer to those questions, we design an experimental proposal. In the study, we plan to conduct an vignette experiment, employing a 2 x 2 between subject factorial design. After recruitment online, participants will be assigned to one out of four different scenarios, in which we vary:

- **The Legal Frame** (Plain vs Grey Law);
- **The Contentious Right** (Abortion vs Drug Use);⁴ and
- **The Level of ‘Controversiality’** (High or Low) of the plain vs grey law described in the vignette.

The overall structure of the experimental design is described in Fig. 1. In the rest of this title we described the main elements of our proposed paradigm, mentioning only abortion as an example of contentious right.

³ For a broader description of our outcome variables of interest, see title III.b below.

⁴ The two rights chosen are meant to represent cases that are still deemed contentious among the public. Of course frames acquire relevance to regulate those cases, because those are the ones in which public opinion reaches higher levels of polarization and division. In the future, a potential third category could be included potentially less contentious than the rights listed so far. The category would serve as a sort of control in our experimental setting.

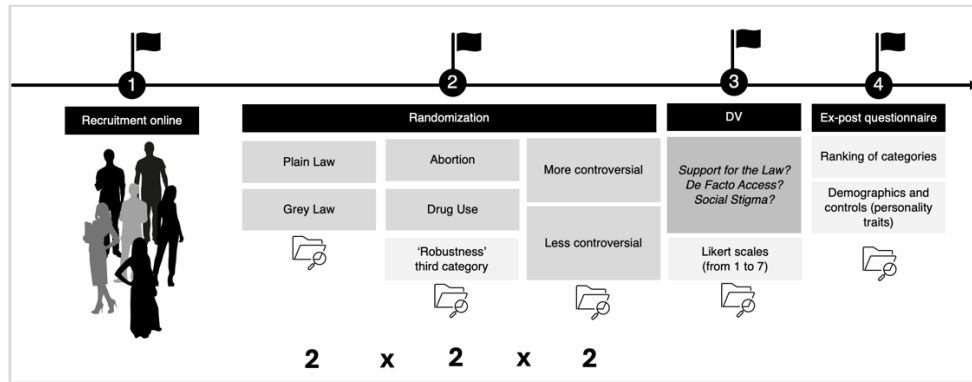


Fig. 1 – Experimental Flow: in the experimental flow, the second IV of interest (‘contentious right’) includes the possibility to expand the investigation by including an additional ‘third’ right to be used as a control.

a. Experimental Conditions

For our first independent variable of interest (*Legal Frame: Plain vs Grey Law*), incorporating all five categories of “right recognition” could introduce confounding factors into the analysis. Here, a rigorous experimental design aimed at isolating the effect of legal frames necessitates selecting categories that are as similar as possible in all respects except for the specific frame employed. For this reason, we operationalise the Legal Frame experimental manipulation by contrasting the two categories **Statutory Right** and **Statutory Exemption Right**.

In all experimental vignettes, participants are introduced to the fictional state of Brentland, a democratic nation where laws are enacted by a parliament through majority rule. Participants are informed that abortion is currently criminalized in Brentland. However, Brentland’s parliament has decided to regulate and protect the right to abortion through a statute, *The Reproductive Health Act*. Depending on the experimental condition, the legal frame used to describe this statute varies:

1. in the *Plain Law* condition, participants are informed that such a law would abolish the current criminalisation of abortion and expressly state the women’s right to abortion. Specifically, they are presented with the following provision from the Act:

“Every woman has the right to access a voluntary termination of pregnancy within the first 6 months of gestation”

2. in the *Grey Law* condition, participants are informed that the law would retain the criminalisation of abortion, while granting an exemption from the punishment

thereof under specific conditions. Specifically, they are informed that the Act would amend Brentland’s Criminal Law, by including the following provision:

“Section I: *Any person who performs or undergoes the termination of a pregnancy shall be subject to imprisonment for a term up to three years or a fine, unless exempted under the provisions listed in this article.*

Section II: *The criminal liability prescribed in Section I shall not apply if the termination is performed within the **first 6 months of gestation.***”

To execute our second experimental manipulation (high vs low level of controversiality), we leverage the specific threshold set in the statute: the 6-month gestation limit. This threshold is used to prime participants with varying degrees of controversy, based on information related to fetal viability (that is, the fetal capacity to survive outside a woman’s womb). Our assumption is that, all else being equal, permitting abortion at the 6th month of gestation—when fetal viability could already occur—would be perceived as more controversial than permitting abortion at a point when viability occurs just beyond the established threshold.

Thus, to operationalise this manipulation, participants are exposed, after reading the vignette, to one of two information sets derived from a real scientific article, published on *The Journal of American Medical Association* in 2022 (Bell et al. 2022). The article reports data on fetal viability based on mortality rates for extremely preterm infants in the United States. The conditions are as follows:

1. In the highly controversial condition, participants will be informed that, based on the article, after **5 months** of gestation, most fetuses are capable of surviving outside the womb.⁵
2. In the less controversial condition, instead, participants will be informed that, based on the article, after **6 months** of gestation, most fetuses are able to survive for more than one year outside a woman’s womb.⁶

b. Outcome Variables

Our outcome variables of interest focus on the perceived impact of the experimental conditions on participants’ behaviors and beliefs. Specifically:

⁵ Indeed, in Bell et al. (2022) shows that around the 5th month of gestation ca. 55% of preterm infants were able to survive, even though the percentage of those who passed their 1st year of life was smaller.

⁶ See note above.

1. **Support for the Law:** The primary dependent variable of interest is participants' level of agreement with the proposed law under the Plain vs. Grey Law frames. This support will be measured using a 7-point Likert scale, where participants will indicate their likelihood of supporting the law, ranging from 1 ("strongly unlikely") to 7 ("strongly likely")
2. **De Facto Access:** A second dependent variable assesses the perceived likelihood of exercising the right to abortion under the different legal frames. Here, participants will respond using a 7-point Likert scale to indicate how likely they believe it is that a woman in the fictional state of Brentland, who does not wish to continue her pregnancy, would terminate it.
3. **Social Stigma:** Finally, we aim to measure the potential variation in social stigma associated with the different legal frames. To do so, we will employ a social-norm elicitation mechanism based on established methods (Bicchieri & Xiao, 2009; Krupka & Weber, 2013). This approach will gauge participants' perceptions of the social appropriateness of the behavior in question (whether it is morally right or wrong) as influenced by the legal frame presented.

IV. Expected Results

We expect the legal frame to have an impact on:

- **The support for the law:** specifically that people will tend to support *more* the Grey Law frame rather than the Plain Law one.
- **De Facto access:** namely, we expect people to consider more likely that people engage in the behavior the right is meant to protect in the Plain Law condition, rather than in the Grey Law one.
- **Social stigma:** although the literature on the expressive function of the law would suggest an effect, the one on social norms and social psychology is more blurred when it comes to the relationship between legal rules and social norms. Hence, here we formulate a merely exploratory hypothesis.

Additionally, we expect an interaction of the effect observed for the legal frame used, with the two different levels of controversiality that we prime for the individuals. Here we anticipate that for the highly controversial scenarios, the differences hypothesized for the support for the law and the de facto access will increase. Conversely, this delta will decrease when considering the less controversial case.